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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DANIELLE E. LEVARIO,
Plaintiff,

Civil No. 09-83-AA
OPINION AND ORDER

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant.

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Attorneys for defendant

AIKEN, Chief Judge:

Claimant, Danielle Levario, brings this action pursuant to the Social Security Act (the Act), 42 U.S.C. §§ 405(g) and 1383(c)(3), to obtain judicial review of a final decision of the Commissioner denying her application for disability insurance benefits under Title II of the Act and for Supplemental Security Income (SSI) disability benefits under Title XVI of the Act. For the reasons set forth below, the Commissioner's decision is affirmed and this case is dismissed.

PROCEDURAL BACKGROUND

Plaintiff filed applications for DIB and SSI on December 16, 2004, alleging disability beginning July 13, 2003, due to her physical and mental impairments. Plaintiff's date last insured for DIB was March 31, 2007. Plaintiff had previously filed applications in 2003; these were denied on initial consideration and plaintiff did not appeal. In November 2006, plaintiff's previous attorney submitted a letter requesting a closed period of disability from July 13, 2003, through July 31, 2005, requesting an on-the-record decision and waiving plaintiff's right to an in-person hearing. On March 19, 2007, the Administrative Law Judge (ALJ) issued a decision finding plaintiff not disabled. In August 2007, the Appeals Council denied review of the ALJ's decision, making the ALJ's decision the final decision of the Commissioner.

STANDARD OF REVIEW

This court must affirm the Secretary's decision if it is based on proper legal standards and the findings are supported by substantial evidence in the record. *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989). Substantial evidence is "more than a

1 mere scintilla. It means such relevant evidence as a reasonable
2 mind might accept as adequate to support a conclusion."
3 Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting
4 Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)).
5 The court must weigh "both the evidence that supports and
6 detracts from the Secretary's conclusion." Martinez v. Heckler,
7 807 F.2d 771, 772 (9th Cir. 1986).

8 The initial burden of proof rests upon the claimant to
9 establish disability. Howard v. Heckler, 782 F.2d 1484, 1486
10 (9th Cir. 1986). To meet this burden, plaintiff must demonstrate
11 an "inability to engage in any substantial gainful activity by
12 reason of any medically determinable physical or mental
13 impairment which can be expected . . . to last for a continuous
14 period of not less than 12 months. . . ." 42 U.S.C. §
15 423(d)(1)(A).

16 The Secretary has established a five-step sequential
17 process for determining whether a person is disabled. Bowen v.
18 Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1520,
19 416.920. First the Secretary determines whether a claimant is
20 engaged in "substantial gainful activity." If so, the claimant
21 is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R. §§
22 404.1520(b), 416.920(b).

23 In step two the Secretary determines whether the claimant
24 has a "medically severe impairment or combination of
25 impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R.
26 §§ 404.1520(c), 416.920(c). If not, the claimant is not
27 disabled.

28 In step three the Secretary determines whether the

1 impairment meets or equals "one of a number of listed impairments
2 that the Secretary acknowledges are so severe as to preclude
3 substantial gainful activity." Id.; see 20 C.F.R. §§
4 404.1520(d), 416.920(d). If so, the claimant is conclusively
5 presumed disabled; if not, the Secretary proceeds to step four.
6 Yuckert, 482 U.S. at 141.

7 In step four the Secretary determines whether the claimant
8 can still perform "past relevant work." 20 C.F.R. §§
9 404.1520(e), 416.920(e). If the claimant can work, she is not
10 disabled. If she cannot perform past relevant work, the burden
11 shifts to the Secretary. In step five, the Secretary must
12 establish that the claimant can perform other work. Yuckert, 482
13 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e)-(g), 416.920(e)-(g).
14 If the Secretary meets this burden and proves that the claimant
15 is able to perform other work which exists in the national
16 economy, she is not disabled. 20 C.F.R. §§ 404.1566, 416.966.

17 **DISCUSSION**

18 1. The ALJ's Findings

19 At Step One of the sequential analysis explained above, the
20 ALJ found that, although plaintiff had earned \$33,815.18 in
21 calender year 2003, and \$2,546.01 in calendar year 2004, tr. 80,
22 it was unclear whether she engaged in substantial gainful
23 activity during the closed period from July 13, 2003 to July 31,
24 2005, and therefore, no decision would be made at this step in
25 the evaluation process. Tr. 21.

26 At Step Two, the ALJ found that, during the closed period
27 from July 13, 2003, to July 31, 2005, plaintiff had severe
28 impairments including status post concussion, status post left

1 upper extremity fracture, status post surgeries of the right
2 knee, injuries to bilateral knees, and adjustment disorder. Id.

3 At Step Three, the ALJ found that during the closed period,
4 plaintiff's impairments did not meet or equal the requirements of
5 a listed impairment. Id.

6 During the closed period, the ALJ determined that plaintiff
7 had the residual functional capacity ("RFC") to perform light
8 work. She could occasionally lift or carry twenty pounds and
9 frequently lift and/or carry ten pounds; she could stand and/or
10 walk for a total of at least six hours in an eight-hour workday;
11 sit for a total of six hours in an eight-hour workday; must avoid
12 heights and never climb ladders, ropes or scaffolds; and had mild
13 limitations in her ability to maintain social functioning, and
14 moderate limitations in the ability to maintain concentration,
15 persistence and pace. Tr. 21-22.

16 At Step Four, the ALJ found that during the closed period,
17 plaintiff was capable of performing past relevant work. Tr. 24-
18 25. Therefore, the ALJ found plaintiff not disabled.

19 2. Plaintiff's Allegations of Error

20 The plaintiff contends that the ALJ improperly rejected her
21 examining physicians' opinions. An ALJ may reject medical
22 opinions for specific and legitimate reasons, if those opinions
23 are controverted by other medical opinions of record. Batson v.
24 Commissioner of SSA, 359 F.3d 1190, 1195 (9th Cir. 2004).
25 Plaintiff concedes that the ALJ considered Dr. Steven
26 Dickinson's, Psy.D, diagnoses. Plaintiff argues, however, that
27 the ALJ should have found in his RFC finding that plaintiff had
28 "moderate" limitations in activities of daily living and social

1 functioning, rather than only "mild" limitations in those two
2 categories. Plaintiff bases her argument on Dr. Dickinson's
3 Global Assessment of Functioning ("GAF") of 58 on June 10, 2005.
4 A GAF of 51 - 60 indicates an individual with "some" moderate
5 symptoms (e.g., flat affect, circumstantial speech, occasional
6 panic attacks) "or" moderate difficulty in social, occupational
7 or school functioning (e.g., few friends, conflicts with peers or
8 co-workers). See DSM-IV-TR. The previous year, Dr. Dickinson
9 found that plaintiff had a GAF of 61 (during the period June 10,
10 2004 through June 9, 2005). A GAF of 61 to 70 indicates an
11 individual with "some mild symptoms (e.g. depressed mood and mild
12 insomnia) or some difficulty in social, occupational, or school
13 functioning . . . but generally functions pretty well, has some
14 meaningful interpersonal relationships." DSM-IV-TR at 34. Dr.
15 Dickinson's opinion was supported by examining psychologist Bill
16 Hennings, who assessed plaintiff with only "mild" limitations.
17 Tr. 24, 466.

18 Dr. Davidoff, M.D. assessed plaintiff with frequent
19 postural limitations. Tr. 440. This was accommodated in the
20 ALJ's findings. Tr. 23. Dr. Davidoff assessed plaintiff with
21 the ability to stand and walk from 2-6 hours in an eight-hour
22 workday. Tr. 440. This was also accommodated in the ALJ's
23 findings. Tr. 23. Dr. Davidoff, however, opined that "at this
24 point" (December 31, 2005), plaintiff could lift or carry ten
25 pounds either occasionally or frequently. The ALJ assigned the
26 capacity to lift ten pounds frequently and twenty pounds
27 occasionally. Tr. 23. This difference, however, has no practical
28 application since plaintiff's past relevant work as a therapist

1 involved lifting a maximum of less than ten pounds. Tr. 25.
2 Therefore, based on either restriction, plaintiff would be able
3 to perform her past relevant work and not found disabled. I find
4 that the ALJ accurately evaluated Drs. Dickinson's and Davidoff's
5 opinions. I agree with the ALJ that a disabling degree of
6 impairment was not supported by any physician of record. Tr. 24.
7 There is nothing in the record, including plaintiff's testimony,
8 to support plaintiff's claim that she was disabled for any twelve
9 month period. Plaintiff bears the burden of presenting evidence
10 that proves her inability to perform past relevant work for such
11 a period. See Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9th Cir.
12 1999).

13 Plaintiff also argues that the ALJ failed to properly
14 consider the vocational effects of her impairments. The ALJ
15 concedes that plaintiff broke her right arm and not her left arm.
16 Plaintiff concedes that by the time of Dr. Davidoff's examination
17 in May 2005, her migraines had decreased in frequency to
18 approximately one every three weeks. The parties agree that
19 plaintiff's back pain caused the sitting, standing and walking
20 limitations assigned by Dr. Davidoff. Plaintiff failed to show
21 how a temporary right wrist and right thumb impairment would have
22 prevented her from resuming her work as a therapist. See Tackett,
23 180 F.3d at 1098-99. The ALJ's interpretation of the evidence is
24 reasonable and therefore affirmed. See Batson v. Comm'r of the
25 Soc. Sec. Admin., 359 F.3d 1190, 1193 (9th Cir. 2004) (ALJ's
26 finding must be upheld when supported by rational interpretations
27 of the evidence).
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1 **CONCLUSION**

2 The Commissioner's decision is based on substantial
3 evidence, and is therefore, affirmed. This case is dismissed.
4 IT IS SO ORDERED.

5 Dated this 19 day of May 2010.

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9 /s/ Ann Aiken

10 Ann Aiken
11 United States District Judge
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